

E-FILED on 6/19/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RAMBUS INC.,

Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR
MANUFACTURING AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR, INC.,
SAMSUNG AUSTIN SEMICONDUCTOR,
L.P.,

NANYA TECHNOLOGY CORPORATION,
NANYA TECHNOLOGY CORPORATION
U.S.A.,

Defendants.

No. C-05-00334 RMW

ORDER DENYING RAMBUS'S MOTION TO
DISMISS COUNTERCLAIM 3 OF HYNIX'S
FIRST AMENDED COUNTERCLAIMS

[Re Docket No. 151]

Plaintiff Rambus Inc. ("Rambus") moves to dismiss "Counterclaim 3" of the First Amended Answer to First Amended Complaint and First Amended Counterclaims ("FAA") filed by defendants Hynix Semiconductor Inc., Hynix Semiconductor America Inc., and Hynix

1 Semiconductor Manufacturing America Inc. (collectively "Hynix"). Rambus argues that
2 Counterclaim 3, which alleges violation of Cal. Bus. & Prof. Code section 17200, is time-barred.
3 Hynix opposes the motion. The court has read the moving and opposing papers and considered the
4 arguments of counsel. For the reasons set forth below, the court DENIES Rambus's motion to
5 dismiss.

6 In its counterclaims, Hynix alleges improper conduct on Rambus's part with respect to patent
7 claims and patent enforcement. In the 1990's, Rambus joined the Joint Electronic Devices
8 Engineering Council ("JEDEC"), a non-profit standard-setting organization for, *inter alia*, the
9 DRAM chip industry. FAA ¶¶ 199.10, 199.14. According to Hynix, Rambus participated in JEDEC
10 with the goal of acquiring information about the developing standards for SDRAM. *Id.* ¶ 199.25.
11 Rambus used this information to plan a "patent 'ambush'" whereby it would have the power to
12 exclude competitors from implementing the pending JEDEC SDRAM standard and subsequent
13 improvements. *Id.* ¶¶ 199.26-27, 199.31. Without disclosing its amendment activity to JEDEC
14 members, Rambus amended its patent applications to cover the JEDEC standard. *Id.* ¶¶ 199.31,
15 214.3. Hynix alleges that Rambus then deliberately chose not to assert its claimed patent rights until
16 Hynix and other industry participants had significantly invested in products compatible with the
17 JEDEC standard. *Id.* ¶¶ 199.87, 214.4. Therefore, Hynix asserts, Rambus acquired the market
18 power, or a dangerous probability of obtaining market power, over the market for DRAM memory.
19 *Id.* ¶ 202.

20 In alleging a continuing antitrust violation, "an overt act by the defendant is required to
21 restart the statute of limitations." *Pace Indus. v. Three Phoenix Co.*, 813 F.2d 234, 237 (9th Cir.
22 1987). An overt act has two elements: "1) [i]t must be a new and independent act that is not merely
23 a reaffirmation of a previous act; and 2) it must inflict new and accumulating injury on the plaintiff."
24 *Id.* at 238. If an initial act or decision occurs outside the limitations period, "separate violations . . .
25 not controlled by the previous act or decision" restart the statute of limitations, but mere continuing
26 injury does not. *Id.*

27 Here, Hynix argues that the issuance of, *inter alia*, Rambus's patents-in-suit between January
28 30, 2001 and October 19, 2004, constitute overt acts within the statute of limitations. Rambus's


antitrust efforts are alleged to include the amendment of patents to cover the JEDEC standard and its foreseeable extensions and improvements, which include the SDRAM interfaces currently in use. See FAA §§ 199.26-27, 214.3. Because the statute of limitations is measured from the last occurrence of an overt act in furtherance of the alleged antitrust scheme underlying its section 17200 claim, Hynix argues that these allegations place its section 17200 claim within the statute of limitations. The court agrees. The asserted amendment of the patents-in-suit in furtherance of the alleged antitrust scheme (which is alleged to stem from, *inter alia*, the conduct at JEDEC and attempts to amend patents to cover JEDEC-compliant products), if accepted as true, brings the alleged course of conduct in violation of section 17200 within the four year statute of limitations. See *Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299, 1300-02 (9th Cir. 1986) (holding that affirmative acts inflicting new injury restarted the statute of limitations, even when taken pursuant to an agreement made prior to the limitations period); *Suh v. Yang*, 987 F. Supp. 783, 795-96 (N.D. Cal. 1997).

Rambus argues that no dates are specified as to the allegations regarding prosecution of patents. However, the lack of dates does not render Hynix's pleadings deficient. Where, as here, the allegations involve a continuous course of wrongful conduct in violation of section 17200, fact-specific pleading is not required. See *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 46-47 (1998) (rejecting the requirement that a plaintiff make "specific factual allegations in addition to pleading the elements of the alleged unlawful act"); *People v. Superior Court (Jayhill Corp.)*, 9 Cal. 3d 283, 287-88 (1973) (holding that specific pleadings of time and place were unnecessary where plaintiffs alleged a scheme to mislead customers and that such details were properly the subject of discovery). It is sufficient that Hynix's pleadings indicate that the patents-in-suit, issued within the limitations period, are part of the alleged wrongful course of conduct.

III. ORDER

For the foregoing reasons, the court DENIES Rambus's motion to dismiss.

DATED: 6/18/07


RONALD M. WHYTE
United States District Judge

1 Notice of this document has been electronically sent to:

2 **Counsel for Plaintiff:**

3 Jeannine Y. Sano	sanoj@howrey.com
Brian K. Erickson	berickson@dbllp.com
4 Burton Alexander Gross, Esq	Burton.Gross@mto.com
Carolyn Hoecker Luedtke	carolyn.luedtke@mto.com
5 Craig N. Tolliver	ctolliver@mckoolsmith.com
David C. Vondle	dvondle@akingump.com
6 Gregory P. Stone	gregory.stone@mto.com
Peter A. Detre	detrepa@mto.com
7 Pierre J. Hubert	phubert@mckoolsmith.com
Steven McCall Perry	steven.perry@mto.com

9 **Counsel for Defendants:**

10 Jason Sheffield Angell	jangell@orrick.com
Theodore G. Brown, III	tgbrown@townsend.com
11 Vickie L. Feeman	vfeeman@orrick.com
Daniel J. Furniss	djfurniss@townsend.com
12 David J. Healey	david.healey@weil.com
Jordan Trent Jones	jtjones@townsend.com
13 Ana Elena Kadala	anita.kadala@weil.com
Patrick Lynch	plynch@omm.com
14 Kenneth L. Nissly	kennissly@thelenreid.com
Kenneth R. O'Rourke	korourke@omm.com
15 Matthew D. Powers	matthew.powers@weil.com
Edward R. Reines	Edward.Reines@weil.com
16 Mark Shean	mshean@orrick.com
Kaiwen Tseng	ktseng@orrick.com
17 Geoffrey H. Yost	gyost@thelenreid.com
Susan Gregory van Keulen	svankeulen@thelenreid.com

21 Counsel are responsible for distributing copies of this document to co-counsel that have not
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25 **Dated:** 6/1807

SPT
Chambers of Judge Whyte